

Order

Michigan Supreme Court
Lansing, Michigan

July 29, 2014

Robert P. Young, Jr.,
Chief Justice

149347 & (66)

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant/
Cross-Appellee,

v

SC: 149347
COA: 312409
Wayne CC: 11-008725-FC

JIMMY EARL MCCASKILL,
Defendant-Appellee/
Cross-Appellant.

On order of the Court, the application for leave to appeal the April 1, 2014 judgment of the Court of Appeals and the application for leave to appeal as cross-appellant are considered. Pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals, and REMAND this case to the Court of Appeals to reconsider whether any error in admitting the police officer's identification testimony was harmless. The Court of Appeals found that the error was not harmless beyond a reasonable doubt. That standard applies to preserved constitutional questions. *People v Carines*, 460 Mich 750 (1999). For nonconstitutional preserved error, a defendant has the burden of establishing a miscarriage of justice under a "more probable than not" standard. *People v Lukity*, 460 Mich 484 (1999). If the Court of Appeals determines that the error was harmless, it shall consider the remaining issues presented by the defendant on appeal. In all other respects, the applications are DENIED, because we are not persuaded that the remaining questions presented should now be reviewed by this Court.

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 29, 2014


Clerk